

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR BENEFICIAL WATER USE PERMIT	)	FINAL ORDER
NO. 71966-g41I BY FORESTVALE	)	
CEMETERY ASSOCIATION - DOROTHY	)	
WELLS, TRUSTEE	)	

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the August 16, 1990 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Application for Beneficial Water Use Permit No. 71966-g41I is hereby granted to Forestvale Cemetery Association to appropriate 112 gpm up to 20 acre-feet of water to supplementally irrigate 36 acres, for the period of April 1st to September 30th, inclusive of each year.

Groundwater will be pumped from the well located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 6, Township 10 North, Range 3 West, Lewis and Clark County, Montana. The place of use is in the NW $\frac{1}{4}$  of Section

**CASE # 71966**

6, Township 10 North, Range 3 West, Lewis and Clark County, Montana. The priority date of this Permit is July 12, 1989, at 10:35 a.m.

The Permit in this matter is issued subject to the following express terms, conditions, restrictions, and limitations:

A. This Permit is subject to all prior and existing water rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the Permittee to the detriment of any senior appropriator.

B. Issuance of this Permit by the Department shall not reduce the Permittee's liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same.

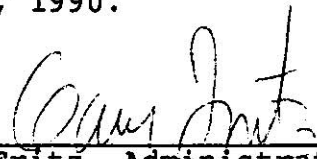
C. The Permittee must install an accurate measuring device, such as an on-line meter, at a point between the well and the sprinklers. The Permittee must once a month record on paper the flow rate and acre-feet volume indicated on the measuring device and must at the end of the irrigation season record the total volume of water used. These records shall be kept by the Applicant every year and shall be available to the Department upon request.

NOTICE

The Department's Final Order may be appealed in accordance

with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

Dated this 9 day of ~~September~~ <sup>October</sup>, 1990.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural Resources  
and Conservation  
Water Resources Division  
1520 East 6th Avenue  
Helena, Montana 59620-2301  
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 10<sup>th</sup> day of ~~September~~ <sup>OCTOBER</sup>, 1990 as follows:

Robert E. Lousen  
830 Vallejo Road  
Helena, MT 59601

Raymond K. and Linda M. Read  
470 Ronda Road  
Helena, MT 59601

Marian E. Menard  
P.O. Box 4457  
410 Ronda Road  
Helena, MT 59604

Martin B. Miller  
690 Sewell Road  
Helena, MT 59601


Forestvale Cemetery Association  
Dorothy Wells, Trustee  
Box 1049  
Helena, MT 59624

William Uthman, Hydrogeologist  
Water Management Bureau  
Dept. Natural Resources & Cons.  
1520 East Sixth Avenue  
Helena, MT 59620-2301

Greg Van Voast, WRS II  
Water Rights Field Office  
1520 East Sixth Avenue  
Helena, MT 59620-2301

Barnett Water Users Assoc.  
5950 Barnett Drive  
Helena, MT 59601

Silvio Rodriguez, Hearing Examiner  
Department of Natural  
Resources and Conservation  
P.O. Box 438  
Lewistown, MT 59457

  
Cindy G. Campbell  
Hearings Unit Secretary

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR BENEFICIAL WATER USE PERMIT	)	PROPOSAL FOR DECISION
NO. 71966-g41I BY FORESTVALE CEMETERY	)	
ASSOCIATION - DOROTHY WELLS, TRUSTEE	)	

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing in the above-entitled matter was held on June 28, 1990, in Helena, Montana. The record was closed at the conclusion of this hearing.

APPEARANCES

The Applicant, Forestvale Cemetery Association - Dorothy Wells, Trustee, was represented by Debra Crider, (hereafter "Applicant") caretaker for the cemetery, and by Mr. Barnekoff, President of Forestvale Cemetery Association.

Objector, Barnett Water Users Association, was represented by Clyde Boulding, (hereafter "Objector Barnett"), President of the Association.

William Uthman, Department of Natural Resources and Conservation (DNRC) geohydrologist, and Greg Van Voast, DNRC Water Resources Specialist III, appeared as DNRC expert staff witnesses.

Objectors of record not present at the hearing are as follows: Robert E. Lousen, Raymond K. and Linda M. Read, Marian E. Menard, and Martin B. Miller.

EXHIBITS

Neither the Applicant nor Objector Barnett offered any

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exhibits for inclusion in the record in this matter.

The Department did not offer any exhibits for inclusion in the record in this matter. The Department file, which contains the originals of the Application and the Objections, correspondence between the Department and the parties, Department processing documents, and William Uthman's hydrogeologic report of the projected impact of this proposed appropriation on objectors wells, was made available at the hearing for review by all parties. No party made objection to any part of the file. Therefore, the Department file in this matter is included in the record in its entirety.

#### FINDINGS OF FACT

1. Section 85-2-302, MCA, states, in relevant part, "Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department." The Applicant has not made application for appropriation of water as described under § 85-2-306, MCA. Therefore, § 85-2-302, MCA, applies in this matter.

2. Application for Beneficial Water Use Permit No. 71966-g41I was duly filed with the Department of Natural Resources and Conservation on July 12, 1989, at 10:35 a.m.

3. The pertinent portions of the Application were published in the Independent Record, a newspaper of general circulation in the area of the source, on January 3, 1990.

4. The source of water for the proposed appropriation is groundwater by means of a well. The proposed well will be used in conjunction with the presently used existing well which was dug to a depth of 50 feet in 1938 (Supplement to Application. See file). Drilling of the well was completed on June 14, 1989, at a depth of 102 feet (well log on file).

5. The Applicant has applied for 112 gallons per minute (gpm) up to 20 acre-feet of water per year for supplemental irrigation on 36 acres located in the NW $\frac{1}{4}$  of Section 6, Township 10 North, Range 3 West, Lewis and Clark County, Montana. The well is located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 6, Township 10 North, Range 3 West, Lewis and Clark County, Montana.

6. The driller's log for the well shows that groundwater is available for withdrawal at a rate higher than for which they have applied. The well was tested at over 200 gpm while the application is for 112 gpm.

7. William Uthman's report concludes that the new well should not create more than marginal short-term drawdown interference impacts. Uthman's testimony indicated that the drawdown on objectors' wells would be from 0 to 4 inches drawdown based on the Applicant pumping 5 hours 15 minutes per day.

8. The proposed appropriation is to assist with the irrigation needs of the Applicant. Without the use of this well the Applicant has only the original well and can only irrigate all the lands every 5th day. During hot periods, irrigation every 5th day is not sufficient to maintain the cemetery lands as

green as they could be. With the water available from the new well, there is sufficient water to irrigate the Cemetery lands every 3rd day (testimony of Applicant).

9. Objector Barnett testified that they would withdraw their objection to the Application if the Permit was issued requiring a water measuring device.

10. On the Amended Supplement to Application for Beneficial Water Use Permit, Form No. 600A, the Applicant stated that Forestvale Cemetery Association has possessory interest of the land at the intended place of use. This statement was uncontested. (See File, Amended Form 600A, Section E and F.)

11. Applicant stated in their Application that they were unaware of other planned uses or developments, or reservations that could be adversely affected by the proposed appropriation. This written statement was not contested. (See File.)

#### CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all relevant substantial and procedural requirements of law or rules have been fulfilled, therefore, the matter was properly before the Hearing Examiner. (See Findings of Fact #2 and #3.)

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto. (See Finding of Fact #1.)

3. The Department must issue a Beneficial Water Use Permit if the Applicant proves by substantial credible evidence that the criteria set forth under § 85-2-311, MCA, are met:

4. The proposed use of water for irrigation is a benefi-



cial use of water. (See § 85-2-102(2), MCA. See also Finding of Fact #5.)

5. Objector Marian E. Menard submitted a letter to the Hearing Examiner stating she would not be present at the hearing, and also stating that she was maintaining her objection to the Application in this matter. (See File.)

The following Objectors of record did not appear at the hearing either in person or through representation. Therefore, these Objectors are found in default, and their objections are being dismissed. (See A.R.M. 36.12.208.)

Robert E. Lousen

Raymond K, and Linda M. Read

Martin B. Miller

6. Applicant has proven by substantial credible evidence that there are unappropriated waters in the source of supply, at times when the water can be put to the proposed use, in the amount requested, and throughout the period during which the Applicant seeks to appropriate.

The well driller's log included in the file shows that the well was tested at over 200 gpm, while Applicant is only requesting 112 gpm. (See Finding of Fact #6.)

7. Applicant has proven by substantial credible evidence that the water rights of prior appropriators will not be adversely affected.

Uthman's hydrogeologic report, having had no challenges as to the predicted impact on the Objectors is hereby adopted by the

Hearing Examiner and used as the basis to determine expected drawdown impacts on Objectors' wells.

No evidence was given by Objector Barnett to substantiate that a 4 inch drawdown would constitute adverse impact to their prior use, therefor, the Hearing Examiner concludes that a 4 inch drawdown of Objector Barnett's well is not an adverse impact. (See Finding of Fact #7.)

8. The Applicant has proven by substantial credible evidence that the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved. (See Finding of Fact #1.) 11?

The Hearing Examiner took Administrative Notice of the DNRC water right records for the area in question and verified the absence of previously issued permits or water reservations for the area in question.

9. Applicant has proven by substantial credible evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed supplemental irrigation use from the new well drilled. (See Findings of Fact #6 and #8.)

10. The Applicant has possessory interest of the land at the intended place of use. (See Finding of Fact #10.)

Wherefore, based upon the foregoing Findings of Fact and Conclusions of Law, and upon the record in this matter, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Application for Beneficial Water Use Permit No. 71966-g41I is hereby granted to Forestvale Cemetery Association to appropriate 112 gpm up to 20 acre-feet of water to supplementally irrigate 36 acres, for the period of April 1st to September 30th, inclusive of each year.

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B. Issuance of this Permit by the Department shall not reduce the Permittee's liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same.

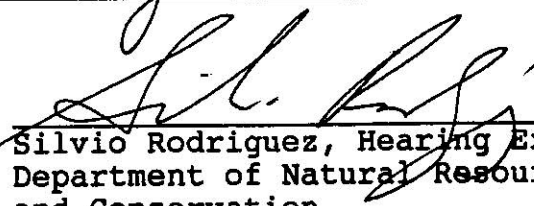
C. The Permittee must install an accurate measuring device, such as an on-line meter, at a point between the well and the sprinklers. The Permittee must once a month record on paper the flow rate and acre-feet volume indicated on the measuring device and must at the end of the irrigation season record the total volume of water used. These records shall be kept by the Applicant every year and shall be available to the Department upon request.

#### NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 16 day of August, 1990.

  
Silvio Rodriguez, Hearing Examiner  
Department of Natural Resources  
and Conservation  
PO Box 438  
Lewistown, MT 59457  
(406) 538-7459

#### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the

foregoing Proposal for Decision was duly served by first class mail upon all parties of record at their address or addresses this 17<sup>th</sup> day of August, 1990, as follows:

Robert E. Lousen  
830 Vallejo Road  
Helena, MT 59601

Raymond K. and Linda M. Read  
470 Ronda Road  
Helena, MT 59601

Marian E. Menard  
P.O. Box 4457  
410 Ronda Road  
Helena, MT 59604

Martin B. Miller  
690 Sewell Road  
Helena, MT 59601

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5950 Barnett Drive  
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Dorothy Wells, Trustee  
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William Uthman, Hydrogeologist  
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